

AMENDED IN SENATE DECEMBER 15, 2009

SENATE BILL

No. 437

Introduced by Senator Pavley

February 26, 2009

~~An act to amend Section 2891.1 of the Public Utilities Code, relating~~
An act to add Section 2898 to the Public Utilities Code, relating to
telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 437, as amended, Pavley. ~~Unlisted telephone numbers.~~
Telecommunications: local exchange service: notice to subscribers.

The Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. The Telecommunications Customer Service Act of 1993 requires the commission to require telephone corporations to provide certain customer services to telecommunication customers, as specified.

This bill would require a local exchange service provider to provide prescribed notice to affected subscribers in advance of a proposed change to its services, subscribers' service agreements, or nonterm contracts that may result in higher rates or charges or more restrictive terms or conditions. The bill would prohibit a local exchange service provider from assessing an early termination penalty otherwise applicable under the contract if the subscriber terminates service within 30 days from the effective date of the change. Under the bill, a proposed contract change subject to the notification requirement would not be enforceable unless the provider has complied with that requirement.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law prohibits a telephone corporation selling or licensing lists of~~

~~residential subscribers, from including the telephone number of any subscriber assigned an unpublished or unlisted access number, as defined, without his or her written waiver of this protection. Existing law prohibits a provider of mobile telephony services, as defined, or any affiliate or agent of the provider, providing the name and dialing number of a subscriber for inclusion in a directory or directory database, from including the dialing number of any subscriber without first obtaining the express consent of that subscriber. Existing law establishes certain requirements for the provider's form for obtaining the subscriber's express consent. Existing law prohibits a subscriber from being charged for making the choice to not have his or her name and mobile telephony dialing number listed in a publicly available directory assistance database.~~

~~This bill would, instead, prohibit a subscriber from being charged for making the choice to not have his or her name or telephone number listed in a directory or publicly available directory assistance database.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. It is the intent of the Legislature that local*
- 2 *exchange service providers give subscribers clear and conspicuous*
- 3 *notice of contract changes, including, but not limited to, changes*
- 4 *in rates, charges, terms, or conditions, and that subscribers be*
- 5 *given sufficient time to respond to changes by changing or opting*
- 6 *out of their contracts, as permitted under the terms of the contract.*
- 7 *SEC. 2. Section 2898 is added to the Public Utilities Code, to*
- 8 *read:*
- 9 *2898. (a) A local exchange service provider shall notify*
- 10 *subscribers of changes to terms or conditions of service in a clear*
- 11 *and conspicuous manner, in accordance with all of the following:*
- 12 *(1) A local exchange service provider shall notify all affected*
- 13 *subscribers at least 60 days, or two billing cycles, whichever period*
- 14 *is longer, in advance of a proposed change to its services,*
- 15 *subscribers' service agreements, or nonterm contracts that may*
- 16 *result in higher rates or charges or more restrictive terms or*
- 17 *conditions.*

1 (2) *The notice to a subscriber shall appear on the front page of*
2 *the subscriber's paper or online billing statement with the*
3 *following statement:*

4
5 *"Your Rates, Terms or Services Will Change Effective (DATE*
6 *OF CHANGE)."*

7
8 (3) *The notice shall present, in a clear and conspicuous manner,*
9 *all of the following:*

10 (A) *The current term or condition.*

11 (B) *The change being made in that term or condition. The notice*
12 *shall describe the proposed change to a rate or charge in dollar*
13 *and percentage terms. The portion of the notice describing the*
14 *actual change being made shall be in a font that is in bold type*
15 *and at least two points larger than surrounding type.*

16 (C) *The following statement:*

17
18 *"The terms of your contract have changed, and you may*
19 *terminate the contract, or make changes as allowed under the*
20 *existing contract, within 30 days from the effective date of the*
21 *change, without penalty."*

22
23 (D) *If the change of rates, charges, or conditions applies to*
24 *contract features that are not basic local exchange services and*
25 *are optional features, the notice shall include instructions for how*
26 *a subscriber may opt out of those optional features without*
27 *canceling the contract.*

28 (b) *If the subscriber terminates service within 30 days from the*
29 *effective date of the change, the local exchange service provider*
30 *shall not assess the subscriber any early termination penalty*
31 *otherwise applicable under the contract.*

32 (c) *A proposed change to a current contract term or condition*
33 *that is subject to the notification requirements imposed in*
34 *subdivision (a) shall not be enforceable unless the local exchange*
35 *service provider has complied with that subdivision.*

36 ~~SECTION 1. It is the intent of the Legislature to prohibit~~
37 ~~telephone companies, including mobile telephony service providers,~~
38 ~~from charging customers to have an unlisted or unpublished~~
39 ~~telephone number.~~

1 ~~SEC. 2.—Section 2891.1 of the Public Utilities Code is amended~~
2 ~~to read:~~

3 ~~2891.1.—(a) Notwithstanding Section 2891, a telephone~~
4 ~~corporation selling or licensing lists of residential subscribers shall~~
5 ~~not include the telephone number of any subscriber assigned an~~
6 ~~unlisted or unpublished access number. A subscriber may waive~~
7 ~~all or part of the protection provided by this subdivision through~~
8 ~~written notice to the telephone corporation.~~

9 ~~(b) Notwithstanding Section 2891, a provider of mobile~~
10 ~~telephony services, or any direct or indirect affiliate or agent of a~~
11 ~~provider, providing the name and dialing number of a subscriber~~
12 ~~for inclusion in any directory of any form, or selling the contents~~
13 ~~of any directory database, or any portion or segment thereof, shall~~
14 ~~not include the dialing number of any subscriber without first~~
15 ~~obtaining the express consent of that subscriber. The express~~
16 ~~consent shall meet all of the following requirements:~~

17 ~~(1) It shall be one of the following:~~

18 ~~(A) A separate document that is signed and dated by the~~
19 ~~subscriber, and that is not attached to any other document.~~

20 ~~(B) An affirmative response made on a separate field on an~~
21 ~~Internet Web site where there is no default. The provider of mobile~~
22 ~~telephony services shall send a confirmation notice to the~~
23 ~~subscriber's electronic mail address, or to a subscriber's postal~~
24 ~~mail address if the subscriber does not have an electronic mail~~
25 ~~account.~~

26 ~~(2) It shall be unambiguous, legible, and conspicuously disclose~~
27 ~~that, by opting in, the subscriber is consenting to have the~~
28 ~~subscriber's dialing number sold or licensed as part of a list of~~
29 ~~subscribers and the subscriber's dialing number may be included~~
30 ~~in a publicly available directory.~~

31 ~~(3) If, under the subscriber's calling plan, the subscriber may~~
32 ~~be billed for receiving unsolicited calls or text messaging from a~~
33 ~~telemarketer, the provider's form shall include an unambiguous~~
34 ~~and legible disclosure statement that, by consenting to have the~~
35 ~~subscriber's dialing number sold or licensed as part of a list of~~
36 ~~subscribers or included in a publicly available directory, the~~
37 ~~subscriber may incur additional charges for receiving unsolicited~~
38 ~~calls or text messages.~~

39 ~~(c) Nothing in this section prohibits a subscriber of mobile~~
40 ~~telephony services from voluntarily entering into an agreement~~

1 for the placement of his or her name and mobile telephony dialing
2 number in any advertising program if the agreement satisfies the
3 express consent requirements of this section.

4 (d) A subscriber who provides express prior consent pursuant
5 to subdivision (b) may revoke that consent at any time. A provider
6 of mobile telephony services shall comply with the subscriber's
7 request to opt out within a reasonable period of time, not to exceed
8 60 days.

9 (e) A subscriber shall not be charged for making the choice to
10 not have his or her name or telephone number, or both, listed in a
11 directory or publicly available directory assistance database.

12 (f) This section does not apply to the provision of telephone
13 numbers to the following parties for the purposes indicated:

14 (1) To a collection agency, to the extent disclosures made by
15 the agency are supervised by the commission, exclusively for the
16 collection of unpaid debts.

17 (2) (A) To any law enforcement agency, fire protection agency,
18 public health agency, public environmental health agency, city or
19 county emergency services planning agency, or private for-profit
20 agency operating under contract with, and at the direction of, one
21 or more of these agencies, for the exclusive purpose of responding
22 to a 911 call or communicating an imminent threat to life or
23 property.

24 (B) Any information or records provided to a private for-profit
25 agency pursuant to this subdivision shall be held in confidence by
26 that agency and by any individual employed by or associated with
27 that agency. This information or these records shall not be open
28 to examination for any purpose not directly connected with the
29 administration of the services specified in subdivision (e) of Section
30 2872 or this paragraph.

31 (3) To a lawful process issued under state or federal law.

32 (4) To a telephone corporation providing service between service
33 areas for the provision to the subscriber of telephone service
34 between service areas, or to third parties for the limited purpose
35 of providing billing services.

36 (5) To a telephone corporation to effectuate a customer's request
37 to transfer the customer's assigned telephone number from the
38 customer's existing provider of telecommunications services to a
39 new provider of telecommunications services.

1 ~~(6) To the commission pursuant to its jurisdiction and control~~
2 ~~over telephone and telegraph corporations.~~

3 ~~(g) Every deliberate violation of this section is grounds for a~~
4 ~~civil suit by the aggrieved subscriber against the organization or~~
5 ~~corporation and its employees responsible for the violation.~~

6 ~~(h) For purposes of this section, “unpublished or unlisted access~~
7 ~~number” means a telephone, telex, teletex, facsimile, computer~~
8 ~~modem, or any other code number that is assigned to a subscriber~~
9 ~~by a telephone or telegraph corporation for the receipt of~~
10 ~~communications initiated by other telephone or telegraph customers~~
11 ~~and that the subscriber has requested that the telephone or telegraph~~
12 ~~corporation keep in confidence.~~

13 ~~(i) No telephone corporation, nor any official or employee~~
14 ~~thereof, shall be subject to criminal or civil liability for the release~~
15 ~~of customer information as authorized by this section.~~